

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH DAKOTA  
WESTERN DIVISION**

STATE OF INDIANA, *et al.*,

PLAINTIFFS,

v.

ALEJANDRO MAYORKAS, in his official  
capacity as Secretary of Homeland Security, *et  
al.*;

DEFENDANTS.

CIVIL ACTION NO. 1:23-cv-00106-CRH

**RESPONSE TO DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY**

Plaintiffs hereby respond to Defendants' Notice of Supplemental Authority (ECF 77, 78) regarding a Western District of Texas District Court decision related to Article III standing and an exception to the Circumvention of Lawful Pathways Rule.

In *Texas v. Mayorkas*, --- F.Supp.3d ---, 2024 WL 369380 (W.D. Tx. August 5, 2024), the Court determined that Texas lacked standing to challenge the exception to asylum ineligibility for individuals who schedule appointments using the CBP One App. The Court relied upon *United States v. Texas* ("*Enforcement Priorities*"), 599 U.S. 670 (2023), in dismissing Texas' complaint finding no "exercise of coercive power over Texas" in the Rule or its exception. But the Plaintiffs have distinguished *Enforcement Priorities* in the motion to dismiss briefing. See ECF 61, pp 6-9. The arguments made by Plaintiffs were adopted in a Northern District of Florida District Court decision. See *Florida v. United States*, --- F.Supp.3d -- -, 2024 WL 677713 (N.D. Fl. February 20, 2024), The Court in *Enforcement Priorities* recognized "monetary costs are of course an injury." *Enforcement Priorities*, 599 U.S. at 676.

*Texas v. Mayorkas* is wrongly decided because it expands the *Enforcement Priorities* decision beyond prosecutorial decisions to an adjudicatory process.

Respectfully Submitted,

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